

**IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

**APPEAL NO. 1693 /2019**

**MOMIN KHAN**

**VS**

**EDUCATION DEPTT:**

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**APPELLANT**

THROUGH:

**NOOR MUHAMMAD KHATTAK**  
**ADVOCATE**

Room No. 3 & 4, Upper Floor,  
Islamia Club Building,  
Khyber Bazar, Peshawar  
0345-9383141

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. 1693 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1601

Dated 08/11/2019

Mr. Momin Khan, SST (BPS-16),  
Gms Pai Khel Kotaki, Tehsil Munda, District Dir Lower..... **APPELLANT**

**VERSUS**

- 1- The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (M), District Swat.

..... **RESPONDENTS**

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT GRANTING/ALLOWING PROMOTION TO THE APPELLANT TO THE POST OF SECONDARY SCHOOL TEACHER (BPS-16) FROM THE DATE WHEN THE PROMOTION QUOTA WAS FILLED BY THE RESPONDENTS THROUGH INITIAL RECRUITMENT OR FROM THE DATE OF COMMENCEMENT OF THE ACT NO.XVI OF 2009 COMMONLY KNOWN AS REGULARIZATION OF SERVICES ACT, 2009 NOTIFIED IN THE OFFICIAL GAZETTE ON 24.10.2009 WITH ALL BACK BENEFITS INCLUDING SENIORITY AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS**

**PRAYERS:**

That on acceptance of this appeal the respondents may kindly be directed to consider the appellant for promotion to the post of Secondary school Teacher (BPS-16) from the date when the promotion quota have been filled by the respondents through initial recruitment or from the date of Commencement of the Act No.XVI of 2009 commonly known as Regularization of Services Act, 2009 Notified in the official gazette on 24.10.2009 with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

**Brief facts giving rise to the present appeal are as under:-**

1- That initially the appellant was appointed as CT in the respondents Department vide order dated 13.05.1992 and right from the date 1<sup>st</sup> appointment the appellant is serving the respondent Department quite efficiently and upto the entire satisfaction of his superiors. Copy of the service book is attached as annexure  
..... **A.**

Filed to-day

Registrar

8/11/19

- 2- That during service as certified teacher the appellant was in the promotion zone to the post of SST (BPS-16) but the respondents instead promoting the appellant advertised the said posts of SST (BPS-16) on adhoc/contract basis. Copy of the advertisement is attached as annexure ..... **B.**
- 3- That under protest the appellant and his colleagues applied for the said post through initial recruitment but the same was also refused to the appellant and colleagues of the appellant on the pretext that regular employees are not entitle to apply for the adhoc/contract posts of SST (BPS-16) thus appellant and his colleagues were deprived from prospects of promotion. That it is pertinent to mention that at the time of above mentioned advertisement the post/cadre of C.T (BPS-15) to which the appellant belong have no prospects of promotion.
- 4- That in light of the said advertisement new appointments were made by the respondents on adhoc basis and even the promotion quota was also filled by the respondents though initial recruitment.
- 5- That in the meanwhile the Provincial Government Promulgated the employees regularization Act, 2009 whereby all the adhoc employees who were appointed as SST on temporary basis were regularized thus further affected the cadre to which the appellant belongs. That the promotion quota for which the appellant and his colleagues have waited for decades has been washed by operation of the said Act of 2009. Copy of the Act is attached as annexure ..... **C.**
- 6- That feeling aggrieved the appellant and his colleagues knocked the door of the Peshawar High Court through various writ petitions including writ petition No.2905/2009. That vide consolidated judgments dated 26.1.2015 the said writ petitions were disposed of with the directions that:  
**(i)- The act.XVI of 2009, commonly known as (Regularization of services) act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.**  
**(ii)- Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within thirty days and consider the in service employees, till the backlog is washed out, till then there would be complete ban on fresh recruit.**  
**Copy of the Judgment is attached as annexure ..... **D.****
- 7- That the respondents assailed the said judgment of the august Peshawar High Court Peshawar in CPLAS No.127-P to 129-P/2015 but the same were dismissed as withdrawn vide judgment dated 20.9.2017. That then after the appellant and his colleagues time

and again visited the respondents for their promotion to the next higher scale but the respondents instead of redressing the grievance of the appellant and his colleagues advertised the posts through initial recruitment through various advertisements. Copies of the judgment and advertisements are attached as annexure ..... **E & F.**

- 8- That it is pertinent to mention that during service the appellant was allowed up gradation/promotion to the newly up graded post of Senior Certified Teacher (BPS-16) vide order dated 21.02.2013. That it is pertinent to mention that appellant is the senior most SCT (BPS-16) of the respondent department and also eligible in all respect for promotion to the post of SST (BPS-16) which was awarded to the appellant vide Notification dated 02.08.2016 but with immediate rather than retrospective effective. Copies of the service rules and educational testimonials are attached as Annexure ..... **G & H.**
- 9- That feeling aggrieved the appellant and his colleagues knocked the door of august Peshawar high Court, Peshawar in various COC Petitions numbers including COC Petition No.105-P/2018 and the same has been disposed of vide judgment dated 8.11.2018 with directions to approached the august Service Tribunal for claiming of promotion and seniority. Copy of the judgment is attached as annexure ..... **I.**
- 10- That feeling aggrieved the appellant preferred Departmental appeal but no response has been received so far. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure ..... **J.**

**GROUND:**

- A- That the inaction of the respondents by not allowing/granting ante dated promotion to the appellant to the post of SST (BPS-16) is against the law, facts, norms of natural justice and materials on the record.
- B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the inaction of the respondents by not allowing/granting ante dated promotion to the appellant to the post of SST (BPS-16) is based on mala fide and arbitrary intentions and as such the same is violative of the principle of natural justice.

- D- That, the respondents acted in a malafide manner by not promoting the appellant to the post of SST (BPS-16) from retrospective effect inspite of eligibility, seniority and fitness.
- E- That the respondents acted in arbitrary and malafide manner by not ante dated promotion to appellant to the post of SST (BPS-16) despite the fact that the appellant was not allowed in the initial recruitment process because of the fact that he is in regular promotion zone and will soon be promoted to the post of SST (BPS-16).
- F- That the inaction of the respondents by not allowing/granting promotion to the appellant to the post of SST (BPS-16) is violative of section-9 of the Civil Servant Act 1973 read with Rule-7 of the (Appointment, Promotion & Transfer) Rules 1989.
- G- That as per Rules and regulation the appellant is entitle for promotion to the post of SST (BPS-16) with all consequential benefits including seniority.
- H- That according to Article 38(e) of the Constitution of Pakistan, 1973 the state is bound to reduce disparity in the income and earnings of individual including persons in the services of Federation.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

**APPELLANT**

  
**MOMIN KHAN**


**THROUGH:**

**NOOR MOHAMMAD KHATTAK**

**&**

  
**MIR ZAMAN SAFI**  
**ADVOCATES**

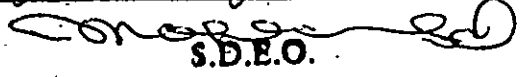
⑧ passed M. Ed (Teacher Education) Examination Dated 20/03/2003  
 Under Roll No K-6546640 from The University of A.O.U Islamabad  
 Securing 667/1200 marks in "B" grade (Good second division)  
 (For use in Police Department only).

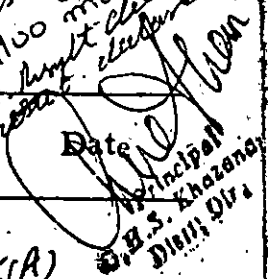
⑨ passed M.A (History) Examination Dated 27<sup>06</sup>/<sub>05</sub>  
 (Annual) under H.E.Rs. Roll No 3273 from The University  
 of Bahawalpur, securing 489/1000 marks in  
 1. Second division. Result declared on  
 2. 14/5/2005.  
 3.   
 Principal  
 G.H.S Khazana

A-5

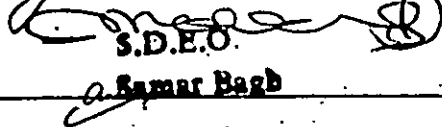
Verification Roll No. dated received back

① passed SSC Exam  
 under Roll No, 8148 from  
 BISE Peshawar in 1985.  
 Securing marks 530  
 out of 850 in grade "B" Left thumb-impression.

  
 S.D.E.O.  
 Samar Bagh

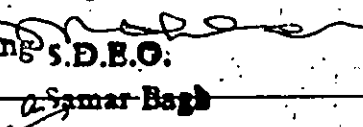
⑦ Passed M.A. (Islamiat) Exam  
 1997(A) Under Roll No. 25915  
 from the University of Peshawar  
 Securing 618/1100 marks in  
 2nd division. Result declared  
 on 17-9-98.  
 Date   
 Principal  
 G.H.S. Khazana  
 Distt. Dir &

② passed Intermediate Exam  
 under Roll No 965 from  
 BISE Peshawar in 1987  
 Securing marks 556 out of  
 1100 in grade "C".

Pashtu   
 S.D.E.O.  
 Samar Bagh

④ passed B.A. Exam 1995(A)  
 under R. No 1657 from  
 Peshawar University  
 Securing 537 marks in 2nd div.  
 Result declared on 16-5-1996.

③ passed CT general Exam  
 from Edu. Deptt: N.W.F.P.  
 Peshawar under Roll No 227  
 Securing marks 738 out of  
 1200. Result declared on 22-19-91

Drill instructing   
 S.D.E.O.  
 Samar Bagh

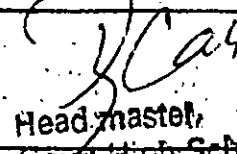
④ Training School Final examination  
 obtained 537 marks in 2nd div.  
 Result declared on 16-5-1996.  
 Head master  
 Govt High School,  
 Miankalli, Distt DIR

Court duties

⑤ passed B.A(A) Exam under  
 roll No: 83510 from University  
 of Peshawar securing marks  
 261 + placed in 2nd div.  
 550  
 Result declared on 17/3/96

⑥ Reserve duties passed B.Sc Exam  
 in 1994(A) under Roll No. 85109.  
 marks obtained 237 + placed  
 in 3rd div: from University of  
 Peshawar.  
 Result declared on 12/3/95

Head master  
 Govt High School,  
 Miankalli, Distt DIR

ATTESTED   
 Head master,  
 Govt High School,  
 Miankalli, Distt DIR.

Note:—The entries in this page should be renewed or re-attested at least every five years and the signature to lines 9 and 10 should be dated.

1. Name .. Mr. Momin-Khan.

(b)

2. Race .. Muslim.

3. Residence .. Vill: Karkand-Shah p. Okhazana  
Teh: Munda Distt: DIR

4. Father's name and residence .. Mian-Gul-Khan.

(as above)

5. Date of birth by Christian era as nearly as can be ascertained .. First March N. H and Sixty nine  
(1-3-1969)

6. Exact height by measurement .. 5-6

7. Personal marks for identification .. A wound scar on right side of Chest.

8. Left hand thumb and Finger impression of (non-gazetted) officer

Little Finger.



Ring Finger



Middle Finger.



Fore Finger



Thumb.



9. Signature of Government servant.

*Momin Khan*

10. Signature and designation of the Head of the Office, or other Attesting Officer.

*[Signature]*  
Sub: Divisional Education Officer  
Jandool Sammerbagh Distt Dir

*[Handwritten marks]*

war  
in  
1969  
Wan  
Okhazana  
Dir

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C. S. R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of appointment	Signature of Government servant
BPS No. 9(1185-12-2265)							
C.T. Post							
GMS Mian-Kali	Temp.	Temp.	1185/-	-	✓	14 <sup>5</sup> / <sub>92</sub>	✓
- do -	- do -	- do -	1257/-	-	A	12 <sup>12</sup> / <sub>92</sub>	✓
C.T. Post							
GMS Mian-Kali	- do -	- do -	1257/-	-	✓	14 <sup>5</sup> / <sub>93</sub>	✓
do	do	do	1329/-	-	A	12 <sup>12</sup> / <sub>93</sub>	✓
BPS 9(1605-97-3060)							
C.T. Post							
GMS Mian-Kali	-	-	1799/-	-	✓	1 <sup>6</sup> / <sub>94</sub>	✓
do	do	do	1896/-	-	-	1 <sup>12</sup> / <sub>94</sub>	✓
do	-	-	1993/-	-	-	1 <sup>12</sup> / <sub>95</sub>	✓
Revised BPS No. 14(206)-161-4480							
C.T.	Temp.	Temp.	B-2065	✓		17-3-96	✓
G.H.S. Khazana	-	-	A-2065	✓		22-8-96	✓
C.T.	- do -	- do -	A-2065	✓		1-12-96	✓
- do -	- do -	- do -	A-2226	✓		1-12-96	✓
- do -	- do -	- do -	B-2387	-	-	1-12-97	✓
- do -	- do -	- do -	B-2548	-	-	1-12-98	✓



Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	10 Date of termination of appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc).	12 Signature of the head of the office or other attesting officer	13 Leave Allocation of period of pay upto four months for which leave salary is debitable to another Government		14 Signature of the head of the office or other attesting officer	15 Reference to any recorded punishment or censure, or reward or praise of the Government Servant.
				Nature and duration of leaves taken	Period Government to which debitable		
S.D.E.O. Samar Bagh	30/11/92	A/2nd	S.D.E.O. Samar Bagh				Appointed against C.T post vide Director of Edu: MKD: Division at Gul-Kada Swat End No 2893-900 dt 13/92
S.D.E.O. Samar Bagh	31/93	School up graded to high level.	S.D.E.O. Samar Bagh				Sub: Divisional Education Officer Mandool Swat, Sindh Distt: Dir
Head master Govt: High School Miankali, DIR.	30/11/93	A/Prnc	Head master Govt: High School Miankali, DIR.				Service verified w.e.f 14/5/92 to 31/5/93 from the office record.
Head master Govt: High School Miankali, DIR.	31/94	Seale Revised	Head master Govt: High School Miankali, DIR.				S.D.E.O. Samar Bagh
Head master Govt: High School Miankali, DIR.	30/11/94	A/Prnc	Head master Govt: High School Miankali, DIR.				Service Verified w.e.f 1-6-93 to 2-12-93 from acq: Roll & other Record of this office.
Head master Govt: High School Miankali, DIR.	30/11/95	A/Prnc	Head master Govt: High School Miankali, DIR.				Service Verified w.e.f 1-1-96 to 2-12-96 from acq: Roll & other Record of this office.
Head master Govt: High School Miankali, DIR.	16/7/96	Advanced 5-14	Head master Govt: High School Miankali, DIR.				Head master Govt: High School Miankali, DIR.
Head master Govt: High School Miankali, DIR.	21/8/96	Prnc	Head master Govt: High School Miankali, DIR.				Allowed 15-14 (2065-161-4480) w.e.f 7-17-3-1996 vide Director of Edu: Swat O.O. No 5210-13
G.H.S. Khuzana Distt: Dir.	30/96	A/Prnc	G.H.S. Khuzana Distt: Dir.				etc 8-4-1996.
G.H.S. Khuzana Distt: Dir.	30/11/97	A/Prnc	G.H.S. Khuzana Distt: Dir.				Head master, Govt: High School, Miankali, Distt: DIR
G.H.S. Khuzana Distt: Dir.	30/11/98	A/Prnc	G.H.S. Khuzana Distt: Dir.				Head master, Govt: High School, Miankali, Distt: DIR
G.H.S. Khuzana Distt: Dir.	30/11/99	A/Prnc	G.H.S. Khuzana Distt: Dir.				Head master, Govt: High School, Miankali, Distt: DIR





1	2	3	4	5	6	7	8	9
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C. S. R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of appointment	Signature of Government servant	Signature of other officer in a
<u>B.P.S NO-14 (3100-240-10300)</u>								
e.T post GHS Khazana	Temp	Temp	5,200/-	-	-	10/2004		
GHS Khazana	Temp	Temp	5,260/-	✓	-	12/2004		
<u>B.P.S NO-14 (3565-275-11815)</u>								
Do	Do	Do	Rs: 6040/-	-	-	01/07/2005		
Do	Do	Do	Rs: 6315/-	-	-	01/12/2005		
C.T post GHS Khazana	Do	Do	Rs: 6590/-	-	-	12/2006		
<u>B.P.S: No: 14 (4100-315-13550)</u>								
C.T post GHS Khazana	Temp	Temp	Rs: 7565/-	-	-	7/07		
<p>OFFICE OF THE ACCOUNTANT GENERAL N.W.F.P. PESHAWAR PAY FIXATION PARTY REVISED BASIC PESHAWAR OF RS. 3565-275-11815 AT RS. 6040/- FROM 07-2005 TO 12-2005 With Next Increment on 12-2005</p> <p> Accounts Officer Pay Fixation Party N.W.F.P. Peshawar</p>								
CT Post GHS Khazana	Temp	Temp	7880/-	-	-	12/07		



1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C. S. R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of appointment	Signature Government servant
CT Post GHS Khazans	Temp	Revised B-15 (4350-350-14850)	Temp 8200/-	-	-	12/07	
E.T.	Temp	BPS NO: 15 (5220-420-17820)	Temp Rs. 9940	-	-	17/08	
- do -	- do -	- do -	Rs. 10260/-	-	-	12/08	
- do -	- do -	- do -	Rs. 10680	-	-	12/09	
Do	Do	Do	Rs. 11100/-	-	-	12/2010	
<p>Extras revised due to allowing 2 Adv. increments on passing in Exam: as under :-</p> <p><u>BPS-14 Rs. 2065-161-8480</u></p> <p>pay on 17-3-96 Rs. 2065/-</p> <p>" " 1-12-96 Rs. 2226/-</p> <p>passed exam 1-12-97 Rs. 2387/-</p> <p>passed exam 17-9-98 Rs. 2709/- (2 Adv. on 17-9-98)</p> <p>1-12-98 Rs. 2870/-</p> <p>1-12-99 Rs. 3031/-</p> <p>1-12-2000 Rs. 3192/-</p> <p>1-12-2001 Rs. 3353/-</p> <p><u>Revised BPS-14 Rs. 3100-240-10300</u></p> <p>pay on 1-12-2001 Rs. 5020/-</p> <p>" " 1-12-2002 Rs. 5260/-</p> <p>" " 1-12-2003 Rs. 5500/-</p> <p>" " 1-12-2004 Rs. 5740/-</p> <p><u>Revised BPS-14 Rs. 3565-275-11815</u></p> <p>pay on 1-7-2005 Rs. 6590/-</p> <p>" " 1-12-2005 Rs. 6865/-</p> <p>" " 1-12-2006 Rs. 7140/-</p>							
<p>G. H. S. Khazans BPS-14</p>							

Signature  
Government  
servant

G. H. S. Khazans  
BPS-14

I hereby exercise my option for fixation of pay scale B-15 after availing annual leave period in B-4 on 11/2/07.

8	10	11	12	Nature and duration of leave taken	Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government Servant.
Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc).	Signature of the head of the office or other attesting officer	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government Government to which debitable	Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government Servant.
Principal G.H.S. Khazana Dir Lower	30/08	Pay Review	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-8-2004 to 30-11-2004	Principal G.H.S. Khazana	From office Record
Principal G.H.S. Khazana Dir Lower	30/08	A/gm.	Principal G.H.S. Khazana Dir Lower	Service verified From 01-12-2004 to 30-11-2005	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/09	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll
Principal G.H.S. Khazana Dir Lower	30/11/2010	A/gm.	Principal G.H.S. Khazana Dir Lower	Service Verified w.e.f. 1-12-2005 to 30-11-2006	Principal G.H.S. Khazana	From office Record and aeq. Roll

Allowed upgraded pay scale B-15 w.e.f. 1/10/2007 vide Govt. of NWFP Finance Deptt No. FD/50 (PR) 10-22/2007 dated 26/1/2008 and approved by the DCO Dir (L) Endorsed by the EDO SFL Dir (L) No. 7106-09 dated 17/4/08 at S.No. 94.

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Principal Armo of Pw. 11K 12 to 30 2007 2008 2765/-

Pay due Rs 8200/Pw - 15 PS 15 7/2008

Service Verified w.e.f. 1/12/06 to 30/11/07 from aeq. Roll and School Record

Principal G.H.S. Khazana Dir Lower

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C. S. R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of appointment	Signature of Government servant
<u>Revised BPS-14 Rs. 440-315-13550</u>							
			Pay on 1-7-2007 Rs. 8195/-				
			u. v. 1-12-2007 Rs. 8510/-				
<u>P/S upgraded to BPS-15 Rs. 4350-350-14850</u>							
			Pay on 2-12-2007 Rs. 8550/-				
<u>Revised pay scale Rs. 5220-420-17820</u>							
GHS Khazana	C-T post	Subs. / ST	Rs. 10260/-			12/2008	
- Do -	- Do -	- Do -	Rs. 10680/-			12/2008	
- Do -	- Do -	- Do -	Rs. 11100/-			12/2009	
- Do -	- Do -	- Do -	Rs. 11520/-			12/2010	
<u>BPS: NO. 15 (8500-700-29500)</u>							
C.T.	Do	Do	Rs. 19000/-			12/2011	
Do.	Do.	Do.	Rs. 19700/-			12/2011	
Do	Do	Do	Rs. 20400/-			12/2012	

8795/14  
10260/15  
19053/15

Office of the Accountant General  
Khyber Pakhtun Khwa Peshawar  
Pay Fixed in the Revised Basic Pay Scales  
R.B.P.S. 440-315-13550  
Pay Fixed @ Rs. 8195/- W.O. 01-07-2007  
ADJ. 5222-420-17820  
Pay Fixed @ Rs. 10260/- W.O. 01-07-2008  
R.B.P.S. 4350-350-14850  
Pay Fixed @ Rs. 10680/- W.O. 01-07-2008  
Date of Non-attachment to Govt. 01-07-2007

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Signature of Government servant	Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc).	Signature of the head of the office or other attesting officer	Leave		Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government Servant.
					Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		
					Period	Government to which debitable		
							Service Verified	
							from 1-12-07 to 30-11-08	
							from Eq: Roll and School Record	
							Principal G.H.S. Khazana Dir Lower	
		30/11/2008					Service Verified w.e.f. 1-12-08 to 30-11-09 from the record.	
		30/11/2009					Principal G.H.S. Khazana Dir Lower	
		30/11/2010					Service Verified from Eq: Roll and School Record	
		30/6/2011	pay resumed				Principal G.H.S. Khazana Dir Lower	
		30/11/2011					Principal G.H.S. Khazana Dir Lower	
		30/11/2012					Principal G.H.S. Khazana Dir Lower	
		30/11/2013	promoted to B-16				Principal G.H.S. Khazana Dir Lower	

Mineral formal sanction vide Govt notification No. FD (SR-1) 2-123/2010 Dated 15/12/2010 and letter No. ED (E & Sec) 3353-3708 dated 9/03/2011 at S.No. 46

AR, DAWER 105 W 308  
 Rs. 17937/-  
 Increment on passing MA exam  
 17/9/08 to 30/11/08  
 1/12/2007 to 31/3/2011

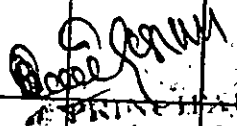
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one addm 9m  
 Rs. 69340/-

Principal G.H.S. Khazana Dir Lower

Principal G.H.S. Khazana Dir Lower

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C. S. R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of appointment	Signature Government servant
S.ET GHS Kharana	B-16	(10000-800-34000)					
	-	-	Rs. 22200/AFN			21.2.2013	(P.N)
	-20	-20	Rs. 22800/-			1.12.2013	
<p>Re-fixation of pay due to allowing one pre-Mature increment on upgradation from B-14 to B-15 B (9350-350-14850) w.e.f 1-12-2007 but no arrears before 30-5-2014.</p>							
SCT B-16 GHS Kharana	Pay on 1-12-2007 in B-15	Rs = 8550/-					
"	" 1-12-2007 in B-15 with pre-Mature B	= 8900/-					
"	" 1-7-2008 " " due to pay revision "	= 10680/-					
"	" 1-12-2008 " " " " " "	= 11100/-					
"	" 1-12-2009 " " " " " "	= 11520/-					
"	" 1-12-2010 " " " " " "	= 11940/-					
"	" 1-7-2011 " " pay revision "	= 19700/-					
"	" 1-12-2011 " " " " " "	= 20400/-					
"	" 1-12-2012 " " " " " "	= 21100/-					
"	" 21-02-2013 " " promotion to B-16 "	= 22000/-					
"	" 1-12-2013 " " " " " "	= 22800/-					

  
 PRINCIPAL  
 GHS. KHARANA  
 DIR LOWER

12

8	10	11	12	13	14	15
Signature of Government servant	Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Leave Nature and duration of leave taken Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government servant	Signature of the head of the office or other attesting officer Reference to any recorded punishment or censure, or reward or praise of the Government Servant.
	Principal G.S. Khazana Distt. Dir.	30-11-2013	Rs 1085000/Prm as per Govt. Order No. 22/11/11 dt 11/11/11 Prm No. 16/20-11 dt 11/11/11 Prm No. 8/11/11 dt 11/11/11 Prm No. 8756	Principal G.S. Khazana Distt. Dir.	Service Verified w.e.f. 1-12-2011 to 30-11-2012 from Acq. Roll and School Record	
			Allowed one pre-mature increment w.e.f. 1-12-2007 on upgradation to B-15 vide Govt. of Khyber Pakhtunkhwa Finance Deptt. Notification No. FD (SO SR-D) 2-123/2014 dated peshawar the 08th May 2014 but no arrears before 30/11/2014		Service Verified w.e.f. 1-12-2011 to 30-11-2012 from Acq. Roll and School Record	
			PRINCIPAL G.H.S. KHAZANA DIR LOWER		Service Verified w.e.f. 1-12-2012 to 20-02-2013 from Acq. Roll and School Record	
			T-240 15/4/2013		Principal G.H.S. Khazana Distt. Dir (L)	
			Pay Active Rs. 22000/- Pm due to Promotion B-16 wef 01-4-2013		Principal G.H.S. Khazana Distt. Dir	
			ATTESTED	Sr. [Signature]	Principal G.H.S. Khazana Distt. Dir	promoted to BPS-16 vide Director of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar Notification No. 4446-52 dt 21-02-13 dt S. No. 119 and DEO official no. 605-88/13 dated 02-03-2013 dt S. No. 119

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C. S. R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of appointment	Signature of Government servant
BPS No-16 (10000-800-34000)							
SCT B-16 GHS Khazana	Temp	Temp	Rs. 23600/-	-	-	1/12/2014	
Revised pay fixed in B-16 w.e.f 1-7-2015 B-16 (12910-1035-43960)							
SCT B-16 GHS Khazana	Temp	Temp	Rs. 30505/-	-	-	1/7/2015	
SCT B-16 GHS Khazana	-Do-	-Do-	Rs. 31540/-	-	-	1/12/2015	
Revised pay fixed in BPS No-16 w.e.f 1-7-2016 B-16 (15880-1280-54280)							
SCT B-16 GHS Khazana	Temp	Temp	Rs. 38920/-	-	-	1/7/2016	
pay fixed in SST (G) B-16 Rs (15880-1280-54280) due to promotion to the post SST (G) B-16 but with option w.e.f 1/12/2016 after availing (A) increment in the previous post i.e. SCT post.							
SST (G) B-16 GHS Khazana	Temp	Temp	Rs. 38920/pm	-	-	09/08/2016	
GHS Khazana	Temp	Temp	Rs. 41480/pm	same scale + pre 2016 / mature increment		4/8/2016	
refination SST GHS Khazana	The teacher concerned		he considered option for		refination of pay after availing (A) increment on 1/12/2016 w.e.f 760/-		

13

	9	10	11	12	13	14	15
Signature of Government servant	Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc).	Signature of the head of the office or other attesting officer	Nature and duration of leave taken Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government Period Government to which debitable	Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government Servant.
	Principal G.H.S. Khazana Distt Dir.	30 <sup>11</sup> 2014	Almes	Principal G.H.S. Khazana Distt Dir.	T 13 2/5		
	Principal G.H.S. Khazana Distt Dir.	30 <sup>6</sup> 2015	pay revised	Principal G.H.S. Khazana Distt Dir.	Paid arrears of promotion B-16 WEF 21 <sup>2</sup> / <sub>13</sub> to 31 <sup>3</sup> / <sub>2013</sub>		
	PRINCIPAL G.H.S.S. Khazana Distt Lower Dir.	30 <sup>11</sup> 2015	Almes	PRINCIPAL G.H.S.S. Khazana Distt Lower Dir.	Rs. 6651/-		
	PRINCIPAL G.H.S.S. Khazana Distt Lower Dir.	30 <sup>6</sup> 2016	pay revised	PRINCIPAL G.H.S.S. Khazana Distt Lower Dir.	Rs. 8280/-		
	PRINCIPAL G.H.S.S. Khazana Distt Lower Dir.	03 <sup>08</sup> 2016	promoted SST (C)	PRINCIPAL G.H.S.S. Khazana Distt Lower Dir.	ATTESTED		
	Principal GHSS Khazana	promoted to the post of SST (C) vide notification no. 4145-51/100 no. 2/promotion SST B-16 office of the Director of Elementary and Secondary Education K.P.K. Peshawar dated the 02/08/2016 at s.no 20 of C2 promotion of SST to the post of SST (C) B-16 and vide PEO (M) Enclt no. 12556-39 dated Timespan 04/08/2016			Service verified wef 21/2/013 to 31/7/2016 from the office record.		
	Principal GHSS Khazana				PRINCIPAL G.H.S.S. Khazana Distt Lower Dir.		

PRINCIPAL  
G.H.S.S. Khazana  
Distt Lower Dir.



14

Service No: 108-2016

30-11-2016

Signature of Government Servant	10 Date of termination of appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc).	12 Signature of the head of the office or other attesting officer	13 Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		Signature of the head of the office or other attesting officer Principal GHSS Khazana	Reference to any recorded punishment or censure, or reward or praise of the Government Servant.
				Nature and duration of leave taken	Period Government to which debitable		
Principal GHSS Khazana Dir Lower	30/11/2017	12/1/2018	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	pay p/m ref 1-8/2016
Principal GHSS Khazana Dir Lower	27/4/2018	Transfer	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	as SST 15-16
Principal GHSS Khazana Dir Lower	30/11/2018	A/Mer	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	as SST 15-16
Principal GHSS Khazana Dir Lower	30/11/2018	A/Mer	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	as SST 15-16
Principal GHSS Khazana Dir Lower	30/11/2018	A/Mer	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	as SST 15-16
Principal GHSS Khazana Dir Lower	30/11/2018	A/Mer	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	as SST 15-16
Principal GHSS Khazana Dir Lower	30/11/2018	A/Mer	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	as SST 15-16
Principal GHSS Khazana Dir Lower	30/11/2018	A/Mer	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	as SST 15-16
Principal GHSS Khazana Dir Lower	30/11/2018	A/Mer	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	as SST 15-16
Principal GHSS Khazana Dir Lower	30/11/2018	A/Mer	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	as SST 15-16
Principal GHSS Khazana Dir Lower	30/11/2018	A/Mer	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	as SST 15-16
Principal GHSS Khazana Dir Lower	30/11/2018	A/Mer	Principal GHSS Khazana Dir Lower			Principal GHSS Khazana	as SST 15-16

Pay 1085-414801-PM  
 15-16 as SST 15-16  
 ref 1-10-2016  
 15-16 as SST 15-16  
 ref 5-8-16 to 30/11/2016

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 1-10-18  
 Pay 1085-52360PM  
 Transfer to 4ms 1-5-2019  
 as per option  
 1-5-2019  
 1-10-18

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8	10	11	12	13		14	15	
Signature of Government servant	Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government	Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government Servant.
					Leave			
					Period	Government to which debitable		
						Service verified w/f 1-12-2016 to 30-11-2017 from the school record.	Principal GHSS Khazana Dir Lower	
						Service verified w/f 1-12-2017 to 27-11-2018 from the office record.	Principal GHSS Khazana Dir Lower	
						Service verified w/f 28-4-018 to 31-12-2018 from the office record.	Principal GHSS Khazana Dir Lower By Dist. Edu. Officer Dir District Office	





THE <sup>3</sup>[KHYBER PAKHTUNKHWA]  
EMPLOYEES (REGULARIZATION OF SERVICES) ACT, 2009.  
(<sup>4</sup>[KHYBER PAKHTUNKHWA] ACT NO. XVI OF 2009)

[First published after having received the assent of the Governor of the <sup>5</sup>[Khyber Pakhtunkhwa] in the Gazette of <sup>6</sup>[Khyber Pakhtunkhwa] (Extraordinary), dated the 24<sup>th</sup> October, 2009]

AN  
ACT

to provide for the regularization of the services of certain employees appointed on adhoc or contract basis.

WHEREAS it is expedient to provide for the regularization of the services of certain employees appointed on adhoc or contract basis, in the public interest, for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and commencement.**---(1) This Act may be called the <sup>7</sup>[Khyber Pakhtunkhwa] Employees (Regularization of Services) Act, 2009.

(2) It shall come into force at once.

2. **Definitions.**---(1) In this Act, unless the context otherwise requires,-

- (a) "Commission" means the <sup>8</sup>[Khyber Pakhtunkhwa] Public Service Commission;
- (aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment;
- (b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge basis or who are paid out of contingencies;

<sup>3</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>4</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>5</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>6</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>7</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

<sup>8</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

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- (c) "Government" means the Government of the <sup>9</sup>[Khyber Pakhtunkhwa];
- (d) "Government Department" means any department constituted under rule 3 of the <sup>10</sup>[Khyber Pakhtunkhwa] Government Rules of Business, 1985, and does not include any section of a Department or an organization which is federally funded;
- (e) "law or rule" means the law or rule for the time being in force governing the selection and appointment of civil servants; and
- (f) "post" means a post under Government or in connection with the affairs of Government to be filled in on the recommendation of the Commission.

(2) The expressions "ad hoc or contract appointment" and "civil servant" shall have the same meanings as respectively assigned to them in the <sup>11</sup>[Khyber Pakhtunkhwa] Civil Servants Act, 1973 (<sup>12</sup>[Khyber Pakhtunkhwa] Act No. XVIII of 1973).

3. **Regularization of services of certain employees.**---All employees including recommendees of the High Court appointed on contract or ad hoc basis and holding that post on 31<sup>st</sup> December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post:

Provided that the service promotion quota of all service cadres shall not be affected.

4. **Determination of seniority.**---(1) The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority interse of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

<sup>9</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011  
<sup>10</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011  
<sup>11</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011  
<sup>12</sup>Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

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Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

4A. **Overriding effect.**—Notwithstanding any thing to the contrary contained in any other law or rule for the time being in force, the provisions of this Act shall have an overriding effect and the provisions of any such law or rule to the extent of inconsistency to this Act shall cease to have effect.

5. **Repeal.**—The North-West Frontier Province Employees (Regularization of Services) Ordinance, 2009 (N.-W.F.P. Ordinance No. VII of 2009) is hereby repealed.

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D-19 (19) 1

تنظیم اسانڈہ (پالٹان) صوبہ خیبر پختونخوا -  
خیر اللہ حواری نگران شعبہ ہیرو صوبہ خیبر پختونخوا -  
سید محمد شاہ باجا صدر آل پیمرز کوارڈی نیشن کونسل صوبہ  
JUDGMENT SHEET

PESHAWAR HIGH COURT PESHAWAR  
(JUDICIAL DEPARTMENT)

سندھ فنان صدر ضلع نیشاور  
شاہد محمود گوہر

Writ Petition No.2905 of 2009.  
ATTA ULLAH AND OTHERS.....PETITIONERS.

VERSUS.

THE CHIEF SECRETARY KPK ETC....RESPONDENTS..

JUDGMENT.

Date of hearing 26-01-2015.

Appellant/Petitioner by Ghulam Nabi Khan Advocate

Respondent by Waqar Ali Raza Advocate - & Waqar Ahmad Khan A.A.

WAQAR AHMAD SETH, J:- Through this single judgment we propose to dispose of the instant Writ Petition No.2905 OF 2009 as well as the connected Writ Petition Nos.2941, 2967,2968,3016, 3025,3053,3189,3251,3292 of 2009,496,556,664,1256,1662,1685,1696,2176,2230,2501,2606,2798 of 2010 & 206, 355,435 & 677 of 2011 as common question of law and fact is involved in all these petitions.

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2- The petitioners in all the writ petitions have approached this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following relief:-

"It is, therefore, prayed that on acceptance of the Amended Writ Petition the above noted Act No.XVI 2009 namely 'The North West Province Employees (Regularization of Services) Act, 2009 dated 24<sup>th</sup> October, 2009' being illegal, unlawful, without authority and jurisdiction, based on malafide intentions and being unconstitutional as well as ultra vires to the basic rights as mentioned in the constitution be set-aside and the respondents be directed to fill up the above noted posts after going through the legal and lawful and the normal procedure as prescribed under the prevailing laws instead of using the short cuts for obliging their own person.

It is further prayed that the notification No.A-14/SET(M) dated 11.12.2009 and Notification No.A-17/SET(5) Contract-Appnt:2009 dated 11.12.2009, as well as Notification No.SO(G)ES/1/85/2009/SS(Contract) dated

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31.05.2010 issued as a result of above noted impugned Act whereby all the private respondents have been regularized may also be set-aside in the light of the above submissions, being illegal, unlawful, unconstitutional and against the fundamental rights of the petitioners.

Any other relief deemed fit and proper in the circumstances and has not been particular asked for in the noted Writ Petition may also be very graciously granted to the petitioners".

3- It is averred in the petition that the petitioners are serving in the Education Department of KPK working posted as PST,CT,DM,PET,AT,TT, Qari and SET in different Schools; that respondents No.9 to 1359 were appointed on adhoc/contract basis on different times and later on their service were regularised through the North West Frontier Province Employees (Regularization of Services) Act, 2009; that almost all the petitioners have got the required qualifications and also got at their credit the length of service; that as per notification No.SO(S)6-2/97 dated 03/06/1996

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the qualification for appointment/promotion of the SET Teachers BPS-16 was prescribed that 75% SETs shall be selected through Departmental Selection Committee on the basis of batchwise/yearwise open merit from amongst the candidates having the prescribed qualification and remaining 25% by initial recruitment through Public Service Commission whereas through the same notification the qualification for the appointment/promotion of the Subject Specialist Teachers BPS-17 was prescribed that 50% shall be selected by promotion on the basis of seniority cum fitness amongst the SETs possessing the qualification prescribed for initial recruitment having five years service and remaining 50 by initial recruitment through the Public Service Commission and the above procedure was adopted by the Education Department till 22/09/2002 and the appointments on the above noted posts were made in the light of the above notification. It was further averred that the Ordinance No. XXVII of 2002 notified on 09/08/2002 was promulgated under the shadow of which some 1681 posts of different cadres were advertised by the Public Service Commission.

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That before the promulgation of Act No.XVI of 2009, it was practice of the Education Department that instead of promoting the eligible and competent persons amongst the teachers community, they have been advertising the above noted posts of SET (BPS-16) and Subject Specialist (BPS-17) on the basis of open merit/adhoc/contract wherein it was clearly mentioned that the said posts will be temporary and will continue only for a tenure of six months or till the appointment by the Public Serviced Commission or Departmental Selection Committee That after passing the KPK Act No.XVI of 2009 by the Provincial Assembly the fresh appointees of six months and one year on the adhoc and contract basis including respondents no.9 to 1351 with a clear affidavit for not adopting any legal course to make their services regularized, have been made permanent and regular employees whereas the employees and teaching staff of the Education Department having at their credit a service of minimum 15 to maximum 30 years have been ignored. That as per contract Policy issued on 26/10/2002 the Education Department was not authorised/entitled to

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make appointments in BPS-16 and above on the contract basis as the only appointing authority under the rules was Public Service Commission. That after the publication made by the Public Service Commission thousands of teachers eligible for the above said posts have already applied but they are still waiting for their calls and that through the above Act thousands of the adhoc teachers have been regularized which has been adversely effected the rights of the petitioners, thus having no efficacious and adequate remedy available to the petitioners, they have knocked the door of this Court through the aforesaid constitutional petitions.

4- The concerned official respondents have furnished para-wise comments wherein they raised certain legal and factual objections including the question of maintainability of the writ petitions. It was further stated that Rule 3(2) of the N.W.F.P. Civil Servants (Appointment, Promotion & Transfer) Rules 1989, authorised a department to lay down method of appointment, qualification and other conditions applicable to post in consultation with Establishment & Administration Department and the Finance Department.

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That to improve/uplist the standard of education, the Government replaced/amended the old procedure i.e. 100% including SETs through Public Service Commission KPK for recruitment of SETs B-16 vide Notification No.SO(PE)-5/SS-RC/Vol-III dated 18/01/2011 wherein 50% SSTs (SET) shall be selected by promotion on the basis of seniority cum fitness in the following manner:-

(i) Forty percent from CT (Gen), CT(Agi), CT(Indust: Art) with at least 5 years service as such and having the qualification mentioned in column 3.

(ii) Four percent from amongst the DM with at least 5 years service as such and having qualification in column 3.

(iii) Four percent from amongst the PET with at least 5 years service as such and having qualification mentioned in column 3.

(iv) One percent amongst Instructional Material Specialists with at least 5 years

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service and having qualification mentioned  
in column 3."

It is further stated in the comments that due to the degradation/fall of quality education the Government abandoned the previous recruitment policy of promotion/appointment/recruitment and in order to improve the standard of teaching cadre in Elementary & Secondary Education Department of KPK, vide Notification dated 09/04/2004 wherein at serial No. 1.5 in column 5 the appointment of SS prescribed as by the initial recruitment and that the (North West Frontier Provincial) Khyber Pakhtunkhwa Employees(Regularization of Services)Act, 2009 (ACT No.XVI of 2009 dated 24<sup>th</sup> October, 2009 is legal, lawful and in accordance with the Constitution of Pakistan which was issued by the competent authority and jurisdiction, therefore, all the writ petitions are liable to be dismissed.

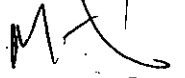
5- We have heard the learned counsel for the parties and have gone through the record as well as the law on the subject.

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6- The grievance of the petitioners is two fold in respect of Khyber Pakhtunkhwa, Employees (Regularization of Services) Act, 2009 firstly, they are alleging that regular post in different cadres were advertised through Public Service Commission in which petitioners were competing with high profile carrier but due to promulgation of Act ibid, they could not made through it as no further proceedings were conducted against the advertised post and secondly, they are agitating the legitimate expectancy regarding their promotion, which has been blocked due to the in block induction / regularization in a huge number, courtesy Act, No. XVI of 2009.

7- As for as, the first contention of advertisement and in block regularization of employees is concerned in this respect it is an admitted fact that the Government has the right and prerogative to withdraw some posts, already advertised, at any stage from Public Service Commission and secondly no one knows that who could be selected in open merit case, however, the right of competition is reserved. In the instant case KPK, employees

**ATTESTED**

(Regularization of Services) Act, 2009, was promulgated, which in-fact was not the first in the line rather N.W.F.P (now Khyber Pakhtunkhwa) Civil Servants (Regularization of Services) Act, 1988, NWFP (now Khyber Pakhtunkhwa) (Regulation of Services) Act, 1989 & NWFP (now Khyber Pakhtunkhwa) Adhoc Civil Servants (Regularization of Services) Act, 1987 were also promulgated and were never challenged by anyone.

8- In order to comment upon the Act, *ibid*, it is important to go through the relevant provision which reads as under:-

S.2 Definitions. (1)---

a)---

aa) "contract appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment.

b) "employee" means an adhoc or a contract employee appointed by Government on adhoc or contract basis or second shift/night shift but does not include the employees for project post or appointed on work charge

**ATTESTED**

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basis or who are paid out of contingencies;  
----- whereas,

S. 3 reads:-

Regularization of services of certain employees.---- All employees including recommendee of the High Court appointed on contract or adhoc basis and holding that post on 31<sup>st</sup> December, 2008 or till the commencement of this Act shall be deemed to have been validly appointed on regular basis having the same qualification and experience for a regular post;

9- The plain reading of above sections of the Act, *ibid*, would show that the Provincial Government, has regularized the "duly qualified persons", who were appointed on contract basis under the Contract Policy, and the said Contract Policy was never ever challenged by any one and the same remained in practice till the commencement of the said Act. Petitioners in their writ petitions have not quoted any single incident / precedent showing that the regularized employees under the said Act, were not qualified for the post against

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which they are regularized, nor had placed on record any documents showing that at the time of their appointment on contract they had made any objection. Even otherwise, the superior courts have time and again reinstated employees whose appointments were declared irregular by the Government Authorities, because authorities being responsible for making irregular appointments on purely temporary and contract basis, could not subsequently turned round and terminate services because of no lack of qualification but on manner of selection and the benefit of the lapses committed on part of authorities could not be given to the employees. In the instant case, as well, at the time of appointment no one objected to, rather the authorities committed lapses, while appointing the private respondent's and others, hence at this belated stage in view of number of judgments, Act, No. XVI of 2009 was promulgated. Interestingly this Act, is not applicable to the education department only, rather all the employees of the Provincial Government, recruited on contract basis till 31<sup>st</sup> December 2008 or till the commencement of this Act have been

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regularized and those employees of to other departments who have been regularized are not party to this writ petition.

10- All the employees have been regularized under the Act, ibid are duly qualified, eligible and competent for the post against which they were appointed on contract basis and this practice remained in operation for years. Majority of those employees getting the benefit of Act, ibid may have become overage, by now for the purpose of recruitment against the fresh post.

11- The law has defined such type of legislation as "beneficial and remedial". A beneficial legislation is a statute which purports to confer a benefit on individuals or a class of persons. The nature of such benefit is to be extended relief to said persons of onerous obligations under contracts. A law enacted for the purpose of correcting a defect in a prior law, or in order to provide a remedy where non previously existed. According to the definition of Corpus Juris Secundum, a remedial statute is designed to correct an existence law, redress an existence grievance, or introduced regularization conducive to the public goods. The challenged

**ATTESTED**


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Act, 2009, seems to be a curative statute as for years the then Provincial Governments, appointed employees on contract basis but admittedly all those contract appointments were made after proper advertisement and on the recommendations of Departmental Selection Committees.

12- In order to appreciate the arguments regarding beneficial legislation it is important to understand the scope and meaning of beneficial, remedial and curative legislation.

Previously these words have been explained by N.S Bindra in interpretation of statute, tenth edition in the following manners:-

"A statute which purports to confer a benefit on individuals or a class of persons, by relieving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive act from individuals with whom they stand in certain relations, is called a beneficial legislations....In interpreting such a statute, the principle established is that there is no room for taking a narrow view but that the court is entitled to be generous towards the persons on whom the benefit has

**ATTESTED**

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been conferred. It is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the rule. It is a well settled canon of construction that in constructing the provision of beneficent enactments, the court should adopt that construction which advances, fulfils, and furthers the object of the Act, rather than the one which would defeat the same and render the protection illusory..... Beneficial provisions call for liberal and broad interpretation so that the real purpose, underlying such enactments, is achieved and full effect is given to the principles underlying such legislation."

Remedial or curative statutes on the other hand have been explained as:-

"A remedial statute is one which remedies defect in the pre existing law, statutory or otherwise. Their purpose is to keep pace with the views of society. They serve to keep our system of jurisprudence up to date and in

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harmony with new ideas or conceptions of what constitute just and proper human conduct. Their legitimate purpose is to advance human rights and relationships. Unless they do this, they are not entitled to be known as remedial legislation nor to be liberally construed. Manifestly a construction that promotes improvements in the administration of justice and the eradication of defect in the system of jurisprudence should be favoured over one that perpetuates a wrong".

Justice Antonin Scalia of the U.S. Supreme Court in his book on Interpretation of Statute states that:

"Remedial statutes are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise from either the general imperfection of all human law, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever."

**ATTESTED**

13- The legal proposition that emerges is that generally beneficial legislation is to be given liberal interpretation, the beneficial legislation must carry curative or remedial content.

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Such legislation must therefore, either clarify an ambiguity or an omission in the existence and must therefore, be explanatory or clarificatory in nature. Since the petitioners does not have the vested rights to be appointed to any particular post, even advertised one and private respondents who have being regularized are having the requisite qualification for the post against which they were appointed, vide challenged Act, 2009, which is not effecting the vested right of anyone, hence, the same is deemed to be a beneficial, remedial and curative legislation of the Parliament.

14- This court in its earlier judgment dated 26<sup>th</sup> November 2009 in WP No. 2905 of 2009, wherein the same Khyber Pakhtunkhwa (Regularization of Servers ) Act, 2009, vires were challenged has held that this court has got no jurisdiction to entertain the writ petition in view of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, as an Act, Rule or Notification effecting the terms and conditions of service, would not be an exception to that, if seen in the light of the spirit of the ratio rendered in the case of

**ATTESTED**

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I.A. Sherwani & others Versus Government of Pakistan,  
reported in 1991 SCMR 1041. Even otherwise, under Rule 3  
(2) of the Khyber Pakhtunkhwa (Civil Servants)  
(appointment), promotion and transfer) Rules 1989, authorize  
a department to lay down method of appointment,  
qualification and other conditions applicable to the post in  
consultation with Establishment & Administrative Department  
and the Finance Department. In the instant case the duly  
elected Provincial Assembly has passed the Bill/Act, which  
was presented through proper channel i.e Law and  
Establishment Department, which cannot be quashed or  
declared illegal at this stage.

15- Now coming to the second aspect of the case, that  
petitioners legitimate expectancy in the shape of promotion  
has suffered due to the promulgation of Act, *ibid*, in this  
respect, it is a long standing principle that promotion is not a  
vested right but it is also an established principle that when  
ever any law, rules or instructions regarding promotion are  
violated then it become vested right. No doubt petitioners in  
the first instance cannot claim promotion as a vested right

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but those who fall within the promotion zone do have the right to be considered for promotion.

16- Since the Act, XVI of 2009 has been declared a beneficial and remedial Act, for the purpose of all those employees who were appointed on contract and may have become overage and the promulgation of the Act, was necessary to given them the protection therefore, the other side of the picture could not be brushed a side simply. It is the vested right of in service employees to be considered for promotion at their own turn. Where a valid and proper rules for promotion have been framed which are not given effect, such omission on the part of Government agency amounts to failure to perform a duty by law and in such cases, High Court always has the jurisdiction to interfere. In service employees / civil servants could not claim promotion to a higher position as a matter of legal right, at the same time, it had to be kept in mind that all public powers were in the nature of a sacred trust and its functionary are required to exercise same in a fair, reasonable and transparent manner strictly in accordance with law. Any transgression from such

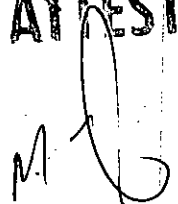
ATTESTED



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principles was liable to be restrained by the superior courts in their jurisdiction under Article 199 of the Constitution. One could not overlook that even in the absence of strict legal right there was always legitimate expectancy on the part of a senior, competent and honest carrier civil servant to be promoted to a higher position or to be considered for promotion and which could only be denied for good, proper and valid reasons.

17- Indeed the petitioners can not claim their initial appointments on a higher post but they have every right to be considered for promotion in accordance with the promotion rules, in field. It is the object of the establishment of the courts and the continue existence of courts of law is to dispense and foster justice and to right the wrong ones. Purpose can never be completely achieved unless the in justice done was undone and unless the courts stepped in and refused to perpetuate what was patently unjust, unfair and unlawful. Moreover, it is the duty of public authorities as appointment is a trust in the hands of public authorities and it is their legal and moral duty to discharge their functions as

**ATTESTED**



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trustee with complete transparency as per requirement of law, so that no person who is eligible and entitle to hold such post is excluded from the purpose of selection and is not deprived of his any right.

18- Considering the above settled principles we are of the firm opinion that Act, XVI of 2009 is although beneficial and remedial legislation but its enactment has effected the in service employees who were in the promotion zone, therefore, we are convinced that to the extent of in service employees / petitioners, who fall within the promotion zone have suffered, and in order to rectify the inadvertent mistake of the respondents/Department, it is recommended that the promotion rules in field be implemented and those employees in a particular cadre to which certain quota for promotion is reserved for in service employees, the same be filled in on promotion basis. In order to remove the ambiguity and confusion in this respect an example is quoted, " If in any cadre as per existence rules, appointment is to be made on 50/50 % basis i.e 50 % initial recruitment and 50 % promotion quota then all the employees have been

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**ATTESTED**  
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regularized under the Act in question be calculated in that cadre and equal number i.e remaining. 50 % are to promoted from amongst the eligible in service employees, other wise, eligible for promotion on the basis of sonority cum fitness."

19- In view of the above, this writ petition is disposed of in the following terms:-

(i) "The Act, XVI of 2009, commonly known as (Regularization Of Services) Act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.

(ii) Official respondents are directed to workout the backlog of the promotion quota as per above mentioned example, within 30 days and consider the In service employees, till the backlog is washed out, till then there would be complete ban on fresh recruitments.

Order accordingly.

Announced.  
26<sup>th</sup> January 2015

*SM. W. Ahmad Hussain*

**JUDGE**

*SM. M. Usman Hameed*

**JUDGE**

**ATTESTED**



**ATTESTED**

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Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 8.7 of  
The Qanun-e-Shahadat Order 1984  
17 JAN 2018

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

E-40

PRESENT:  
MR. JUSTICE EJAZ AFZAL KHAN,  
MR. JUSTICE SH. AZMAT SAEED,  
MR. JUSTICE IJAZ UL AHSAN.

CIVIL PETITIONS NO. 127-P TO 129-P OF 2015.  
(Against the Judgment dated 26.1.2015 of the  
Peshawar High Court, Peshawar passed in Writ  
Petition No. 2905 of 2009, 3045 of 2009, 2004 of 2010)

The Chief Secretary, Govt. of KPK., Peshawar and others. ...Petitioner(s)  
(in all cases)

Versus

Attaullah and others.  
Nasruminullah and others.  
Mukhtar Ahmad and others. ...Respondent(s)

For the petitioner(s): Mr. Mujahid Ali Khan, Addl. A.G. KPK

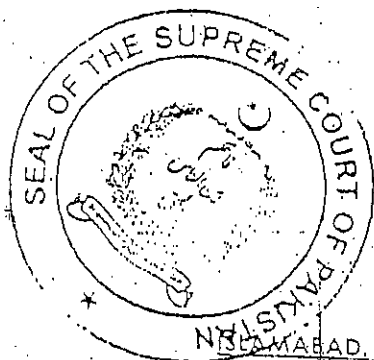
For the respondent(s): Mr. Ghulam Nabi Khan, ASC  
Mr. Abdul Qayyum Sarwar, AOR

Date of Hearing: 20.09.2017.

ORDER

Ejaz Afzal Khan, J. The learned Additional Advocate General  
appearing on behalf of the Govt. of KPK stated at the bar that as per  
instructions of the Government he does not press these petitions. Dismissed  
as such.

Sd/-Ejaz Afzal Khan, J  
Sd/-Sh. Azmat Saeed, J  
Sd/-Ijaz ul Ahsan, J.  
Certified to be True Copy.



20.09.2017  
M. Azhar-Malik

Handwritten signature and date: 25/9/17

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Handwritten signature and date: 29/9/17  
Court Associate  
Supreme Court of Pakistan  
Islamabad

GR No: 14572/17 Civil/Criminal  
Date of Presentation: 29-9-17  
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GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

B-25

NOTIFICATION

Peshawar, dated the November 13, 2012.

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B-25

No. SO(PE)-I-S/SSRC/Meeting/2012/Teaching Cadre:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all Notifications issued in this behalf, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby lays down the method of recruitment, qualification and other conditions specified in the Appendix to this Notification which shall be applicable to all the posts specified in Column No. 2 of the said Appendix and the schedule therewith.

KPK *[Handwritten initials]*

SECRETARY TO GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

Encl. No & Date as above.

Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General, Khyber Pakhtunkhwa Peshawar.
6. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
7. The Director Education (FATA), Peshawar.
8. Copy to the Secretary KPK

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- 8. The Director Curriculum & Teachers Education Abbottabad.
- 9. The Director (PITE) Khyber Pakhtunkhwa Peshawar.
- 10. The Director ESRU, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
- 11. The Deputy Director Database(EMIS) E&SE Department.
- 12. All District Coordination Officers in Khyber Pakhtunkhwa.
- 13. All Executive District Officers Elementary & Secondary Education in Khyber Pakhtunkhwa.
- 14. All District Accounts Officers in Khyber Pakhtunkhwa / Agency Accounts Officers FATA.
- 15. All Agency Education Officers FATA.
- 16. P.S to Governor, Khyber Pakhtunkhwa.
- 17. P.S to Chief Minister, Khyber Pakhtunkhwa.
- 18. P.S to Chief Secretary, Khyber Pakhtunkhwa.
- 19. PS to Minister E&SE Khyber Pakhtunkhwa Peshawar.
- 20. PS to Secretary E&SE Department.
- 21. Master File.

KPK

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Section Officer (Primary)

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APPENDIX

S.NO.	Nomenclature of the post	Minimum qualification and experience for initial appointment or by transfer	Age limit	Method of recruitment.
1.	2.	3.	4.	5.
1.	Secondary School Teacher (BPS-16)	(i) Second class Bachelor's Degree with two subjects as Chemistry, Botany, Zoology, Physics, Mathematics, Statistics Humanities and other equivalent groups from a recognized University: or  (ii) M.A in Education or Bachelor's Degree in Education from a recognized university.	18 to 35 Years.	(a) Fifty percent by promotion on the basis of seniority-cum-fitness in the following manners. (i) forty percent from amongst the certified Teachers (General). Certified Teachers (Industrial Arts) and Certified Teachers (Home Economics) with at least five years service as such and having qualification mentioned in column No. 3. (ii) four percent from amongst the Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3. (iii) four percent from amongst the Physical Education Teachers with at least five years service

*SET → Redesignated*

*No quota has been allocated for DST's cadre.*

ATTESTED


*Attested M-D*

			<p>(iv) one percent from amongst the Instructional Material Specialists, with at least five years service as such and having qualification mentioned in column No. 3, and</p> <p>(v) one percent from amongst the Arabic Teachers with at least five years service as such and having qualification mentioned in Column No. 3, and</p> <p>(b) fifty percent by initial recruitment.</p>
2.	Seniority Arabic Teacher (SAT) (BPS-16)		By promotion on the basis of seniority-cum-fitness from amongst Arabic Teachers with at least five years service as such and having qualification as prescribed for initial recruitment of Arabic Teacher.
3.	Senior Theology Teacher (STT) (BPS-16)		By promotion on the basis of seniority-cum-fitness from amongst Theology Teachers with at least five years service as such and having qualification as prescribed for initial recruitment of Theology Teacher.
4.	Senior Certified Teacher (SCT) (General) (BPS-16)		By promotion on the basis of seniority-cum-fitness from amongst Certified Teachers with at least five years service as such and having qualification as prescribed for initial recruitment of Certified Teacher (General).

ATTESTED

*Attested*  
*Mr. J*

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10.	Arabic Teacher (AT) (BPS-15)	(i) Second Class Secondary School Certificate from a recognized Board with Shahdatul Alamia Fil Uloomul Arabia wal Islamia from or Darul Uloom Saidu Sharif Swat, Darul Uloom Darosh Chitral, Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Arabia from a recognized University.	By initial recruitment.
11.	Theology Teacher (TT) (BPS-15)	(i) Second Class Secondary School Certificate from a recognized Board with Shahdatul Alamia Fil Uloomul Arabia wal Islamia from or Darul Uloom Saidu Sharif Swat, Darul Uloom Darosh Chitral, Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Arabia from a recognized University.	(a) Seventy five percent by initial recruitment; and (b) twenty five percent by promotion on the basis of seniority-cum-fitness from amongst the senior Qaris with at least five years service and having qualification prescribed for initial recruitment of Theology Teacher; Note: In case of non availability of suitable person for promotion then by initial recruitment.
12.	Senior Qari (BPS-15)	 <i>Attested</i> <i>MJ</i>	By promotion on the basis of seniority-cum-fitness from amongst Qaris with at least five years service as such and having qualification as prescribed for initial recruitment.
13.	Certified Teacher (General)	Bechior's Degree or equivalent qualification from a recognized	(a) Forty percent by initial recruitment; and

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		<p>Certified or two years Associate Degree in Education from a recognized University or eighteen months Diploma in Education.</p>	<p>(b) sixty percent by promotion on the basis of seniority-cum-fitness from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (General).          Provide that if no suitable candidate is available amongst the Primary School Head Teachers for transfer, then the posts will be filled by promotion on the basis of seniority-cum-fitness from amongst senior primary school teachers with at least five years service and having qualification prescribed for initial recruitment of certified teacher (General).          Note: In case of non availability of suitable person for promotion then by initial recruitment.</p>
<p>14.</p>	<p>Certified Teacher (Industrial Arts) (BPS-15)</p>	<p>(i) Bachelor's Degree from a recognized University with two years training in the relevant technical subjects from any Government industrial or Govt: Technical vocational Institute or Centre; or          (b) Bachelor's Degree from a recognized</p>	<p>(a) Forty percent by initial recruitment; and          (b) sixty percent by promotion on the basis of seniority-cum-fitness from amongst the primary school head teachers with at least five years service and having qualification prescribed for initial recruitment of certified teacher</p>

ATTESTED

*Attested*  
*M. S.*

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APPENDIX

51

S.No.	Nomenclature of the post.	Minimum qualification and experience for initial appointment or by transfer.	Age limit.	Method of recruitment.
1.	2.	3.	4.	5.
1.	Secondary School Teacher (BPS-16).	(i) Second class Bachelor's Degree with two subjects as Chemistry, Botany, Zoology, Physics, Mathematics, Statistics Humanities and other equivalent groups from a recognized University; or  (ii) M.A in Education or Bachelor's Degree in Education, from a recognized University.	18 to 35 years.	(a) Fifty per cent by promotion on the basis of seniority cum-fitness, in the following manner:  (i) forty per cent from amongst the Certified Teachers (General), Certified Teachers (Agriculture), Certified Teachers (Industrial Arts) and Certified Teachers (Home Economics) with at least five years service as such and having qualification mentioned in column No. 3;  (ii) four per cent from amongst the Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3;  (iii) four per cent from amongst the Physical Education Teachers with at least five years service as such and having qualification mentioned in column No. 3.

KPK. J. B. R. K. S. M. P.

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10.	Arabic Teacher (AT) (BPS-15).	(i) Second Class Secondary School Certificate, from a recognized Board with Shahdatul Alamia Fil Uloomul Arabia wal Islamia from a recognized Tanzimatul Wafaqul Madaris; or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time; or  (ii) Second Class Master's Degree in Arabic from a recognized University.	20 to 35 years.	By initial recruitment
11.	Theology Teacher (TT) (BPS-15).	(i) Second Class Secondary School Certificate, from a recognized Board with Shahdatul Alamia from a recognized Tanzimatul Wafaqul Madaris or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time; or  (ii) Second Class Master's Degree, in Islamiyat from a recognized University.	20 to 35 years.	(a) Seventy-five per cent by initial recruitment; and  (b) twenty-five per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Qaris, with at least five years service and having qualification prescribed for initial recruitment of Theology Teacher;  <u>Note:</u> In case of non availability of suitable person for promotion, then by initial recruitment.
12.	Senior Qari (BPS-15).			By promotion, on the basis of seniority-cum-fitness, from amongst Qaris, with at least five years service as such and having qualification prescribed for initial recruitment.
13.	Certified Teacher (General) (BPS-15).	Bachelor's Degree or equivalent qualification from a recognized University with Certified Teacher	18 to 35 years.	(a) Forty per cent by initial recruitment; and

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		Certificate or two years Associate Degree in Education from a recognized University or eighteen months Diploma in Education.		<p>(b) sixty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (General):</p> <p>Provided that if no suitable candidate is available amongst the Primary School Head Teachers for transfer, then the posts will be filled by promotion on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (General).</p> <p><i>Note:</i> In case of non availability of suitable person for promotion, then by initial recruitment.</p>
11.	Certified Teacher (Industrial Arts) (BPS-15).	<p>(i) Bachelor's Degree from a recognized University with two years training in the relevant technical subjects from any Government Industrial or Govt. Technical Vocational Institute or Center; or</p> <p>(b) Bachelor's Degree from a recognized</p>	18 to 35 years.	<p>(a) Forty per cent by initial recruitment; and</p> <p>(b) sixty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher</p>

*KPK*

*P. M. ...*

ATTESTED

*Pg.*



Primary School Teacher

55

Category of Qualification	Total Marks 100 For Humanities group at Intermediate Level	For Candidate of Science group
SSC	Marks obtained X 20 / total marks = ___	3 Extra marks for F.Sc, 5 Extra marks for U.Sc and 5 Extra marks for M.Sc will be added to the total score obtained by a candidate during his selection
HSSC	Marks obtained X 10 / total marks = ___	
B.V/DSce	Marks obtained X 25 / total marks = ___	
PST Certificate/ Diploma in Education / A.D.E.	Marks obtained X 20 / total marks = ___	
M.A/MSc/M.Ed/ MA Edu	Marks obtained X 20 / total marks = ___	
MPhil/PhD	Marks = 05	

Other conditions:-

1. The concerned Appointing Authority will scrutinize and verify the documents and make the appointment as per prescribed rule and the will get the documents verified after the issuance of appointment orders within shortest possible time, not exceeding ninety (90) days.
2. The merit list prepared by the concerned appointing authority shall be displayed for ten days to receive the objections/appeals, if any, and shall issue the final merit list, after making necessary corrections while addressing the observations/objections/appeals, followed by requisite appointment orders.
3. In case a document(s) is/are found fake/ forged/ bogus upon scrutiny/ verification, the service of the teacher concerned shall be terminated and the amount paid to him as salary shall be recovered from him and an FIR shall be lodged against him on account of forgery/fraud under the relevant law.
4. Doni Aynul from recognized Tozeemat-ul-Wafaqul Muaharis, Darul Uloom Saifu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time will be acceptable for the purpose of appointment against the posts of Arabic Teachers or Theology Teachers, as the case may be.

ATTESTED

*[Handwritten signature]*

*[Handwritten signature]*

51/A

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*[Handwritten mark]*

15-A



# University of Peshawar (Pakistan)

Session ANNUAL 1995

ATTESTED

M. J.

MOHIN KHAN

SON

of

ELAN GUL KHAN

and a student

of DIR DISTRICT

having passed the prescribed examination held in AUGUST 19 95, is this day admitted by the University of Peshawar

to the Degree of

## Bachelor of Arts

in the SECOND division.

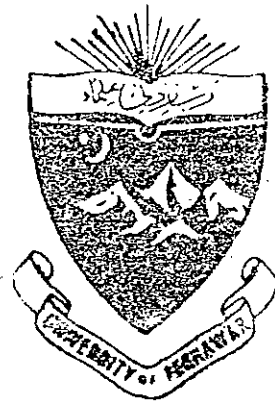
The Examination was taken as a whole / in parts.

Serial No 027731

Registered No 88-TD-937

Roll No. 83510

Result declared on MARCH 17, 1996



Fazli Hamid  
Registrar

Attested  
MIDAYAT KHAN  
B.S. (Maths-Phy) BPS-18  
MGS Kichzama Dir (L)

Countersigned  
Vice-Chancellor



# University of Peshawar (Pakistan)

Session ANNUAL 1997

MOHIN KHAN

Son of MIAN GUL KHAN

and a student

of DISTRICT DIR

having passed the prescribed examination held in APRIL, 1998, is this day admitted by the University of Peshawar to the Degree of

## Master of Arts

in the SECOND division.

The subject of Examination being ISLAMIYAT  
The Examination was taken as a whole / in parts.

ATTESTED

Serial No: 022129

Registered No: 08-1D-957

Roll No: 25915

Result declared on SEPTEMBER 17, 1998



Attested  
NOOR AYAT KHAN  
SST (Maths-Phy) EPS-16  
GHS Khazana Dir (L)

*Fazli Hamid*  
Registrar

Countersigned

*M. L.*  
Vice-Chancellor

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

Registered No. 04-18-22-52

Roll No. 3273

Serial No. M 34954

The Jamia University of Bahawalpur



(54)

SESSION 2004

THIS IS TO CERTIFY THAT

Muhammad Khan  
Son / Daughter of Mian Gul Khan

of the Dir District


has obtained the degree of

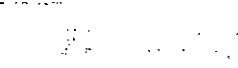
**Master of Arts**


in History in this University at the examination held in February, 2005  
securing 489/1000 marks and was placed in the Second Division.

The examination was taken as a whole / in parts.

Also passed in the Compulsory paper of Islamiyat.

  
Controller of Examinations

  
Chancellor

  
Vice Chancellor

Bahawalpur, Pakistan  
Date of Issue: 14-04-2007

Date of declaration of result: 14-05-2005.

Attested  
Muhammad

ATTESTED





# University of Peshawar (Pakistan)

Session ANNUAL 1995

MOHIN KHAN Son of MIAN GUL KHAN

and a student of DIR DISTRICT having passed the prescribed examination in OCTOBER 1995, is this day admitted by the University of Peshawar to the Degree of

## Bachelor of Education

In the SECOND Division in Theory

In the SECOND Division, in Teaching Practice

In the SECOND Division in Aggregate

He / She also passed GENERAL SCIENCE as additional/optional subject.

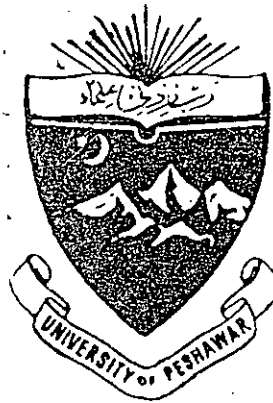
The Examination was taken as a whole / in parts:

Serial No. 006370

Registered No. 88-TD-957

Enrolment No. 1677

Result declared on JUNE 16, 1996



Attested  
*Mohamm*  
UNIVERSITY OF PESHAWAR  
16/16-17/1995  
1003 Khasana Dirkt

*Fazli Hamid*  
Registrar

Countersigned  
*[Signature]*  
Vice-Chancellor

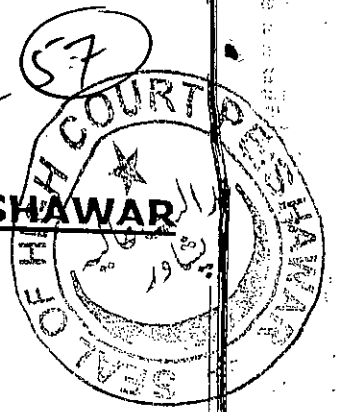
ATTESTED

*[Signature]*

I-57  
**IN THE PESHAWAR HIGH COURT PESHAWAR**

COC NO. 789 /2018

IN  
WRIT PETITION NO.3025-P/2009



Momin Khan (CT),  
GHS Khazana, Dir Lower.

..... PETITIONER

**VERSUS**

- 1- Muhammad Azam Khan, Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- Muhammad Fakhre Alam, Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3- Muhammad Rafiq Khattak, Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

..... Respondents/Contemnors

**APPLICATION UNDER ARTICLE- 204 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC OF  
PAKISTAN, 1973 READ WITH SECTION 3 & 4 OF THE  
CONTEMPT OF COURT ORDINANCE, 2004 FOR  
INITIATING CONTEMPT OF COURT PROCEEDINGS  
AGAINST THE RESPONDENTS/CONTEMNORS**

**RESPECTFULLY SHEWETH:**

- 1- That the applicants/petitioners had filed writ petitions No. 3025/2009 in this august Court which was allowed vide consolidated Judgment dated 26-01-2015. That in the said judgment this august Court directed the respondents to washout the backlog created in terms of promulgation of the Khyber Pakhtunkhwa Regularization of Services Act 2009.
- 2- That in the said judgment this august Court directed the official Respondents as per para 19 sub-para-(i) & (ii) of the judgment which are reproduced as below:-

**"In view of the above this writ petition is disposed of in the following terms:-**

**ATTESTED**

M. T. Q.

(58)

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**(JUDICIAL DEPARTMENT)**

COC No. 79-P/2018 in WP No. 3025/2009

JUDGMENT.

Date of hearing: 23.01.2019

*Muhammad Ishaq Ibrahim*

Petitioner: Momin Khan & Ghulam Nabi & Noor

Respondent: By:- Syed Qaiser Ali Shah

**WAQAR AHMAD SETH, CJ:-** For reasons

recorded in the connected COC No. 67-P/2018 with COC No.

310-P/2018 in WP No. 496/2010, this contempt petition is

disposed of accordingly.

**ANNOUNCED.**

**Dated: 23.01.2019**

Chief Justice

Judge

=====

Nawab Shah SCS (DB) Justice Waqar Ahmad Seth CJ & Justice Ishaq Ibrahim J

**CERTIFIED TO BE TRUE COPY**

Examiner  
Peshawar High Court, Peshawar  
Authorized under Article 97 of  
the Constitution of Pakistan Order 1973

**ATTESTED**

13 FEB 2019

*M*

To,

J-59

The Secretary (E&SE) Department,  
Khyber Pakhtunkhwa, Peshawar.

**DEPARTMENTAL APPEAL FOR THE GRANT OF PROMOTION TO THE POST OF SECONDARY SCHOOL TEACHER (BPS-16) FROM THE DATE WHEN THE PROMOTION QUOTA WAS FILLED UP THROUGH INITIAL RECRUITMENT OR FROM THE DATE OF COMMENCEMENT OF THE ACT NO.XVI OF 2009 COMMONLY KNOWN AS REGULARIZATION OF SERVICES ACT, 2009 NOTIFIED IN THE OFFICIAL GAZETTE ON 24.10.2009 WITH ALL BACK BENEFITS.**

**Respected Sir,**

With due respect it stated that I was initially appointed as CT in your good self Department vide order dated 13.05.1992. During service as Certified Teacher I was in the promotion zone to the post of SST (BPS-16) but the concerned authority instead of promoting me advertised the said posts of SST (BPS-16) on adhoc/contract basis. I was under protest and my colleagues applied for the said post through initial recruitment but the same was also refused to me and my colleagues on the pretext that regular employees are not entitle to apply for the adhoc/contract posts of SST (BPS-16) thus me and my colleagues were deprived from the prospects of promotion. It is pertinent to mention that at the time of above mentioned advertisement the post/cadre of CT (BPS-15) to which I belong have no prospects of promotion.. In light of the said advertisement new appointments were made by the authorities on adhoc basis and even the promotion quota was also filled by the authority though initial recruitment. In the meanwhile the Provincial Government Promulgated the employee's regularization Act, 2009 whereby all the adhoc employees who were appointed as SST on temporary basis were regularized thus further affected the cadre to which I belong. That the promotion quota for which me and my colleagues have waited for decades has been washed by operation of the said Act of 2009. I was feeling aggrieved alongwith my others /colleagues knocked the door of the Peshawar High Court through various writ petitions including writ petition No.2905/2009. That vide consolidated judgments dated 26.1.2015 the said writ petitions were disposed of with the directions that:

**(i)- The act.XVI of 2009, commonly known as (Regularization of services) act, 2009 is held as beneficial and remedial legislation, to which no interference is advisable hence, upheld.**

**(ii)- Official respondents are directed to work out the backlog of the promotion quota as per above mentioned example, within thirty days and consider the in service employees, till the backlog is washed out, till then there**

Attested  
Mr. Q



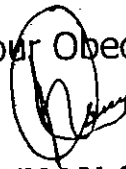
59/A

would be complete ban on fresh recruit. The concerned authority assailed the said judgment of the august Peshawar High Court Peshawar in CPLAS No.127-P to 129-P/2015 but the same were dismissed as withdrawn vide judgment dated 20.9.2017. That then after me and my colleagues time and again visited the concerned quarter for our promotion to the next higher scale but the concerned authority instead of redressing the grievances advertised the posts through initial recruitment through various advertisements. That it is pertinent to mention that I was promoted to the post of SST (BPS-16) vide Notification dated 02.08.2016 with immediate effect rather than retrospective effect i.e. from the date when the quota was filled up through initial recruitment. I am feeling aggrieved filed this Departmental appeal before your good self for redressal of my grievances.

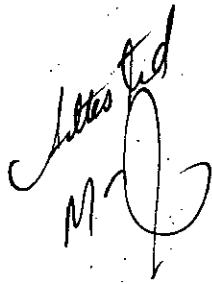
It is therefore, most humbly prayed that on acceptance of this Departmental I may very kindly be promoted to the post of SST (BPS-16) including seniority with all back benefits w.e.f. the date when the promotion quota was filled up through initial recruitment.

Dated: 11.07.2019

Your Obediently



**MOMIN KHAN** SST (BPS-16),  
GMS Pai Khel, Kotaki, District Dir Lower



**VAKALATNAMA**

*Before the KP Service Tribunal, Peshawar*

\_\_\_\_\_ OF 2019

*Momin Khan*

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

*Education Deptt.*

(RESPONDENT)  
(DEFENDANT)

I/we *Momin Khan*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. \_\_\_\_/\_\_\_\_/2019



*Momin Khan*

**CLIENT**

**ACCEPTED**

**NOOR MOHAMMAD KHATTAK**

**SHAHZULLAH KHAN YOUSAFZAI**

**&**

**MIR ZAMAN SAFI**  
ADVOCATES

**OFFICE:**

Flat No.3, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.  
Phone: 091-2211391  
Mobile No. **0345-9383141**

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**SERVICE APPEAL NO.1693/2019.**

MR. Momin Khan SST .

.....Appellant

**VERSUS**

1. The Government Khyber Pakhtunkhwa through Secretary Elementary and secondary Education at Peshawar.
2. Director (Elementary & Secondary Education), Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) Dir lower at Timergara.

(RESPONDENTS)

**PERA WISE COMMENTS ON BEHALF OF RESPONDENTS, 1,2.and 3.**  
**RESPECTFULLY SHEWETH:**

**PRELIMINARY OBJECTIONS:**

1. The appellant has got no locus standi or cause of action to file the instant appeal.
2. The appellant has concealed the material fact from this Hon! Able Tribunal, hence liable to be dismissed.
3. The appellant has not approached this Honorable Tribunal with clean hands.
4. The appellant has filed the instant appeal on malafide motives.
5. The instant appeal is against the prevailing laws & rules.

**ON FACTS.**

1. Correct.
2. As per government policy, the advertisement was made, just to fulfill the vacant posts on contract / ad hock bases. The appellant could not challenge the advertisement/ policy at the time, hence denied.
3. As per advertisement the appellant was not eligible to apply against the contract post, denied.
4. In correct and denied.
5. Correct.
6. Court has already disposed the case hence need no comments.
7. Incorrect, the advertisement was made against 25% quota, whereas 75% quota was fulfilled through promotion. Those who were eligible, promoted to SST BPS-16 including the appellant on his own turn.
8. In addition to para No. 7 above the appellant was promoted to SST BPS-16 under the promotion quota on his own turn, after fulfilling all the caudal formalities.
9. Need no comments.
10. The appellant has been promoted to SST and has given proper seniority number.

**GROUNDS:-**

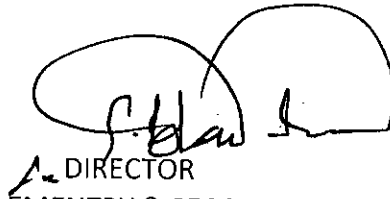
- A. Incorrect, the appellant is misconceived, he has been availed seniority from the date of his promotion.
- B. Incorrect, all the employees are treated as per law/rules in vague.
- C. Incorrect, all the SSTs promoted and the appellants are placed at the seniority list according to their date of promotion.
- D. Incorrect, as per advertisement he was not eligible against the contract/ad hock post, however they were promoted to SST-16 on their turn.
- E. As para D above`.
- F. Incorrect, the appellant was promoted to SST B-16 on his turn under the rules and policy.
- G. Incorrect, the appellant already been availed the benefits of promotion to SST B-16 on his turn and seniority.
- H. Incorrect, the appellant misconceived, there is no disparity and he has been promoted to the post of SST B-16 on his own turn along with others.
- I. The respondent department will argue more at the time of hearing if allowed.

**It is therefore, humbly prayed that on acceptance of the above submission, the instant Service appeal may very graciously be dismissed in favor of the answering respondents with cost.**



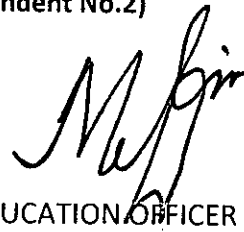
SECRETARY

GOVT: KHYBER PUKHTOON KHWA  
ELEMENTRY AND SECONDARY DEPARTMENT  
(Respondent No.1)



DIRECTOR

ELEMENTRY & SECODARY  
EDUCATION KHYBER PAKHTOON KHWA  
(Respondent No.2)



DISTRICT EDUCATION OFFICER (M)  
DIR LOWER AT TIMERGARA  
(Respondent No.4)